THE HON'BLE SRI JUSTICE RAMESH

RANGANATHAN

W.P.No. 5131 OF 1997

DATE: 6-2-2007

Between:

West Godavari District Cooperative
Marketing Society, Eluru rep. By its
Business Manager .... Petitioner

And

1. The Govt. of A.P. rep. By
its Secretary, Labou, Employment,
Training & Factories (Lab.I) Dept, Hyderabad
And 2 others
..Respondents

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

W.P.No. 5131 OF 1997

ORDER:

Aggrieved by the award of the Labour Court, Guntur in I.D.455 of 1989 dated 30.12.1996, directing the petitioner herein to reinstate the 3rd respondent into service with continuity of service, back wages and other attendant benefits, the present writ petition is filed.

The 3rd respondent, a Salesman working in the petitioner-society, was placed under suspension pending enquiry on 3.12.1981 and thereafter was issued a charge memo wherein three charges were framed against him. A criminal case was also instituted against the 3rd respondent which ended in his acquittal. On the ground that he was not paid subsistence allowance, during the period of his suspension, the 3rd respondent approached the Labour Court under Section 33-C(2) of the Industrial Disputes Act and consequent thereto the petitioner herein paid the subsistence allowance due and payable to the 3rd respondent. The 3rd respondent was dismissed from service on 11.11.1989 on the ground that he had misappropriated stocks and sale proceeds worth Rs.33,518-99. The order of dismissal was given effect retrospectively from 5.10.1986. Surcharge proceedings

under the A.P. Cooperative Societies Act was also instituted which resulted in an award being passed against the 3rd respondent, under Section 61 of the A.P. Cooperative Societies Act for a sum of Rs.39,458-99. Aggrieved thereby, the 3rd respondent approached the Cooperative Tribunal.

Against the order dismissing him from service, the 3rd respondent invoked the jurisdiction of the Labour Court, Guntur under Section 2-A(2) of the Industrial Disputes Act. Before the Labour Court, the 3rd respondent – workman examined himself as W.W.1. On behalf of the petitioners herein two witnesses were examined. While the 3rd respondent – workman marked Exs.W.1 to 17 as evidence on his behalf, the petitioner herein marked Exs.M.1 to M.18 as exhibits. The Labour Court held that there was no convincing evidence placed by the petitioner management for keeping the 3rd respondent under suspension for about 8 years without conducting any enquiry against him and that even in 1989 the petitioner – management did not conduct an enquiry appointing an enquiry officer and that its failure in this regard was in violation of principles of natural justice as reasonable opportunity of defending himself was not given to the 3rd respondent before passing the order of dismissal. The Labour Court further held that the 3rd respondent was

not given reasonable opportunity of submitting his explanation to the charge memo and there was no convincing reason given by the petitioner – management for not conducting a domestic enquiry appointing an enquiry officer. The Labour Court came to the conclusion that the order of dismissal, passed simply after perusing the documents, was nothing but victimization and unfair labour practice. The Labour Court further held that the evidence of M.Ws.1 and 2 was not convincing and their evidence did not establish that the order of dismissal was legal and valid. The Labour Court held that the award passed by the Registrar Cooperative Societies fixing liability on the 3rd respondent of Rs.33,580-90 was stayed by the Cooperative Tribunal from being executed. The Labour Court further held that, since the 3rd respondent was acquitted in the criminal case, no order of dismissal could be passed with retrospective effect and such an order of dismissal passed by the management was illegal, invalid and in violation of principles of natural justice.

Sri K.V.Satyanarayana, learned counsel for the petitioner, would submit that the Labour Court erred in directing reinstatement of the 3rd respondent with continuity of service, back wages and other attendant benefits. While fairly conceding that no domestic enquiry was held, learned counsel would place reliance

P.H.Kalyani v. M/s Air France , Calcutta[1] and **Engineering Laghu Udyog Employees' Union v. Judge, Labour Court and Industrial Tribunal**[2] to contend that even in a case where the domestic enquiry was held to be defective or no domestic enquiry was held, if the employer adduced evidence before the Labour Court and, on the basis of the evidence so adduced, the Labour Court came to the conclusion that the punishment imposed was valid, then the punishment imposed would relate back to the date on which the original order came to be passed. Learned counsel would submit that when the petitioner had adduced evidence before the Labour Court, the Labour Court was duty bound to examine the evidence in order to determine as to whether the punishment of dismissal imposed by the petitioner was valid or not. According to the learned counsel, the mere fact that no domestic enquiry was held or the petitioner was not given adequate opportunity to submit his explanation to the charge memo did not empower the Labour Court to pass an award directing reinstatement of the employee and it was only on the basis of the evidence adduced before it, was the Labour Court required to determine as to whether the petitioner was justified in imposing the punishment of dismissal from service on the 3rd respondent. Learned counsel would further contend that mere acquittal in a criminal case did not by itself

justify the order of punishment being set aside and it could, at best, also be a factor which the Labour Court was required to take into consideration. Learned counsel would rely on a judgments of this Court in **S.K.Ahmed v. Labour Court** [3] and **Depot Manager, APSRTC v, D.Vykuntarao** [4]. Learned counsel would submit that the Cooperative Tribunal had confirmed the award passed against the 3rd respondent under Section 61 of the A.P. Cooperative Societies Act and that the 3rd respondent, aggrieved thereby, had approached this Court and that the writ petition filed thereagainst was still pending. Learned counsel would submit that the Tribunal ought to have taken into consideration the fact that surcharge proceedings instituted against the 3rd respondent had resulted in an award being passed fixing liability on him for payment of a sum of Rs.33.518-99 and in view of the admission of the 3rd respondent before the Arbitrator, the Labour Court ought not to have held that the 3rd respondent was not guilty of the charges levelled against him. Learned counsel would submit that the conclusion drawn by the Labour Court to the effect that the evidence of M.Ws.1 and 2 did not establish that the order of dismissal was legal and valid, is bereft of reasons and reveals non-application of mind. Learned counsel would submit that the Labour Court has not

given any reason in justification of its conclusion that the evidence of M.Ws.1 and 2 did not establish that the order of dismissal was legal or valid.

Sri O.Manohar Reddy, learned counsel for the 3rd respondent, would contend that this Court under Article 226 of the Constitution of India would not sit in appeal over findings of fact recorded by the Labour Court and, since the Labour Court had rightly come to the conclusion that the 3rd respondent was denied reasonable opportunity of submitting his explanation to the charge memo and in as much as no departmental enquiry was held against him to enquire into the charges, the Labour Court was justified in setting aside the order of punishment of dismissal from service and directing reinstatement of the 3rd respondent with continuity of service and full back wages.

While it is true that this Court, in Certiorari proceedings under Article 226 of the Constitution of India, would not sit in appeal over findings of fact recorded by the Labour Court or the conclusions reached by it both on the evidence on record and on the nature and extent of punishment, where the award suffers from an error apparent on its face or where the findings recorded by the Labour Court are perverse and are based on no evidence, this Court would be justified in interfering in the matter. As held in **P.H.Kalyani**[1] and **Engineering Laghu Udyog Employees' Union**

and Workman[2], even in a case where the Labour Court, while adjudicating the preliminary issue with regards validity of the domestic enquiry, comes to the conclusion that the enquiry as held is defective or even in a case where no enquiry has been held against the workman prior to imposition of punishment, it is open to the employer to let in evidence before the Labour Court and in case evidence is so led, the Labour Court has to consider the evidence on record to determine as to whether the order of punishment of dismissal from service imposed on the delinquent workman was justified or not. The Labour Court is also required, even in case where it comes to the conclusion that the charges are held established, to record its conclusions whether the punishment imposed is justified or not.

The mere fact that an employee has been acquitted in a criminal case would not automatically necessitate the punishment imposed in the departmental enquiry being quashed. As held in **M. Paul Anthony Vs. Bharat Gold Mines Ltd**[5] it is only where the departmental enquiry and the criminal proceedings are based on the same charges and the evidence let in is the same would there by any justification in setting aside the order of punishment imposed pursuant to the departmental enquiry on the ground that the employee has been acquitted in the criminal case. As held by this Court, in **S.K.Ahmed**[3]

while an acquittal of an employee of the charges in a criminal case may have some bearing in considering the proportionality of punishment by the Labour Court in exercise of its jurisdiction under Section 11-A, the judgment of the criminal court cannot be held to be conclusive. The Labour Court is not bound by the judgment of the criminal court. The Labour Court is not bound to direct reinstatement of an employee into service on the sole ground of the employee's acquittal even on merits in the criminal case. It may be one of the factors to be taken into consideration by the Labour Court in awarding appropriate punishment in exercise of its jurisdiction under Section 11-A of the Industrial Disputes Act.

The Division Bench of this Court in **D.Vykuntarao** observed:

".....IN our considered view, the reasons assigned by the Tribunal for refusing to set aside the punishment imposed by the disciplinary authority only on the ground of the workman's acquittal by Judicial magistrate of First Class are in consonance with the consistent view expressed by the Supreme Court in R. P. Kapoor v. Union of India (AIR 1964 SC 787), Corporation of the City of Nagpur, Civil Lines, Nagpur v. Ramchandra G. Modak (air 1984 sc 626), Anil kumar Nag v. General Manager (PJ), indian Oil Corpn. Limited, Haldia (JT 2005(8) SC 425), Depot Manager, A. P. State Road transport Corporation v. Mohd. Yousuf Miya (AIR 1997 SC 2232), State of Rajasthan v. B. K. Meena (1996) 7 SCC 417) and Kendriya Vidyalaya sangathan v. T. Srinivas (2004)7 SCC 442). The judgments of Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. (JT 1999(2) SC 456) and G. M. Tank v. State of

Gujarat (2006(4) SCJ 13) are clearly distinguishable because, in both the cases, the Supreme Court came to the conclusion that the foundational facts constituting the charge on which departmental enquiry was held and which were made subject-matter of criminal prosecution were common and evidence produced in both the proceedings were identical. Their Lordships held that if the case set up by the prosecution was thrown out by the Court, the same set of evidence could not be relied for punishing the employee.....”

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The award of the Labour Court is, therefore, quashed and the matter is remanded for its consideration afresh in accordance with law. The Labour Court shall, in exercise of its jurisdiction under Section 11-A of the Industrial Disputes Act, appreciate the evidence on record to determine whether the charges levelled against the 3rd respondent – workman are established as also on the nature and extent of the punishment to be imposed upon him. Since the dispute relates to the year 1989, and more than 16 years have elapsed since then, it is appropriate that the Tribunal shall dispose of the I.D. as expeditiously as possible, in any event, not later than four months from the date of receipt of a coPy of this order, after hearing both the parties to the dispute.

The writ petition is accordingly allowed. However, in the circumstances, without costs.

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[1] AIR 1963 SC 1756
[2] 2004(5) ALD 18 (SC)
[3] 2001(1) ALD 780
[4] 2006(4) ALT 668 (DB)
[5] 1999(3) SCC 679